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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MOHAMMAD NASEEM HANAFI et al., Defendants and Appellants.	B235210 (Los Angeles County Super. Ct. No. SA068628)

APPEALS from judgments of the Superior Court of Los Angeles County, James R. Dabney and Scott T. Millington, Judges. Hanafi's judgment affirmed. Liggins's judgment affirmed as modified.

John Steinberg, under appointment by the Court of Appeal, for Defendant and Appellant Mohammad Naseem Hanafi.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and Appellant Kisasi Liggins.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Pamela C. Hamanaka, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Mohammad Naseem Hanafi of kidnapping for extortion (count 1) (Pen. Code, § 209, subd. (a)),[1] kidnapping (count 3) (§ 207, subd. (a)), criminal threats (count 5) (§ 422), and corporal injury to a spouse (count 6) (§ 273.5, subd. (a)). The jury failed to reach a verdict on one count of grand theft of personal property (count 4) (§ 487, subd. (a)). The jury found Hanafi not guilty of torture (count 2) (§ 206), and attempted willful, deliberate, premeditated murder (count 14) (§§ 664 & 187, subd. (a)). The jury convicted defendant Kisasi Liggins of counts 1 and 3, and found him not guilty of all other counts.[2] On the court's own motion, count 4 was dismissed as to Liggins pursuant to section 1385. As to counts 1 and 3, the trial court found true allegations that Liggins had suffered a prior strike conviction for robbery (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)); served three prior prison terms (§ 667.5, subd. (b)); and suffered a prior conviction of a serious felony, robbery (§ 667, subd. (a)(1)).

The trial court sentenced Hanafi to life imprisonment with the possibility of parole for kidnapping for extortion (count 1); the upper term of eight years for kidnapping (count 3), to run concurrently to the sentence on count 1; the upper term of three years for criminal threats (count 5), which sentence was stayed pursuant to section 654; and the upper term of four years for corporal injury to a spouse (count 6), which sentence was also stayed pursuant to section 654.

The trial court sentenced Liggins to life imprisonment with the possibility of parole for kidnapping for extortion (count 1), plus a second term of life with the possibility of parole because of his strike prior; the middle term of five years, doubled to 10 years as a second strike sentence for kidnapping (count 3); and five years for his serious felony prior conviction (§ 667, subd. (a)(1)). The determinate term of 15 years

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[1] All further undesignated statutory references are to the Penal Code.

[2] As to both appellants an additional seven counts (counts 7-13) were alleged to have been committed against a different victim, Bert Babero, two years earlier than the crimes at issue in this appeal. The jury found both appellants not guilty of those counts and we do not discuss them here.

was ordered to be served first, before the indeterminate terms of life with the possibility of parole. On the court's motion, the prior prison term (§ 667.5, subd. (b)) findings were stricken.

Hanafi contends on appeal that (1) he was deprived of effective assistance of counsel when his attorney conceded to the jury during closing argument that he was guilty of kidnapping; (2) the trial court prejudicially erred by denying Hanafi's motion for a mistrial based on the prosecutor's use of a peremptory challenge to exclude the sole male Pakistani from the jury; (3) the trial court prejudicially erred by denying his motion for a mistrial based on the interpreter's crying during the victim's testimony; (4) there was insufficient evidence to sustain his conviction of kidnapping for extortion; and (5) the kidnapping was an indivisible course of conduct with a single criminal objective, and therefore the prosecution should not have been allowed to split the offense into separate kidnapping offenses, requiring either reversal of count 3 or a stay of the sentence on count 3.

Liggins contends on appeal that his sentence on count 3 must be reversed and the case remanded for resentencing because the trial court erroneously believed it did not have discretion to impose a concurrent sentence for Liggins's conviction on count 3 under the "Three Strikes" law. Liggins also joins in the arguments made by Hanafi on appeal.

We are not persuaded by any of the contentions raised by defendants. Hanafi's judgment is affirmed. However, we observe that the court erred in sentencing Liggins to a second life term on count 1 because of his prior strike. We will modify the sentence to reflect that his minimum term of confinement on count 1 is 14 calendar years. As modified, Liggins's judgment is affirmed.

FACTUAL BACKGROUND

I. Prosecution Case

A. The Nature of the Marital Relationship Between the Victim and Hanafi

The victim, Raisa Begum Hanafi, was 48 years old at the time of trial.[3] She was very frightened to be testifying and was afraid of defendants. Raisa had lived in Pakistan up until the time she married Hanafi in November 1999. Their marriage was arranged by her family. Hanafi had been living in the United States, and about one month after the marriage, Hanafi left Pakistan and returned to the United States.

In April 2001, Raisa came to California and began living with Hanafi in his home in Hawthorne. Raisa felt loving toward Hanafi and hopeful about the prospect of having a happy marriage. However, immediately upon her arrival Hanafi instructed her to clean the bathroom and kitchen. Within two to three months of her arrival, Hanafi struck Raisa for the first time. He continued to hit her periodically, on her arms and face. When he hit her, she would take out her suitcase and say she was returning to Pakistan. Hanafi would say he would not hit her again. They argued frequently, and Hanafi called her ugly, dark, and short. Hanafi threatened to kill her and asked where the knives were kept. Because Raisa was afraid of him she kept the knives hidden. Hanafi once showed her a saw and told her he would slit her throat and saw her head off. She was often afraid when she went to sleep.

From 2001 to 2006, Hanafi expected Raisa to stay at home, clean, cook, do laundry, and massage him. She generally was not allowed to go out, although she begged him to be allowed to study English and he allowed her to attend school for one month. Raisa did not have friends. Raisa had to buy her clothes at the flea market because Hanafi gave her little or no money for her personal expenses. Hanafi sometimes left Raisa alone for weeks at a time while he traveled out of the United States. He did not

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[3] Because appellant Hanafi and the victim share a surname, we will refer to the victim by her first name, with no disrespect intended.

leave money for food or utilities, and she did not have a car or a driver's license. However, she would take walks by herself during the times he was gone.

Sometime during 2006, Hanafi and Raisa began talking about getting divorced. During that year, Hanafi prepared a typewritten document and told her to sign it and go back to Pakistan, or he would kill her. He also presented her with a handwritten document and told her to sign it, but she refused.

In December 2006, Raisa opened a safe deposit box at Washington Mutual Bank (WAMU), without Hanafi's knowledge, under the name Raisa Begum. She also had a bank account there in her name. She placed her separate property and personal documents in the safe deposit box at WAMU, including her Social Security information, jewelry, money, traveler's checks, marriage and birth certificates, bank statement, and her educational degree. Raisa was the sole signatory on the safe deposit box so she was the only one with access to it. Anyone else would have to present a notarized power of attorney to the bank in order to access it. She arranged for any correspondence regarding the safe deposit box to be sent to a post office box rather than her home address. Raisa told Ariana Tzec, an employee at WAMU, that her husband was a horrible person and she did not want him to find out about what she had in the bank.

Again in September 2007, Hanafi gave Raisa a document entitled "Raisa Proposal of Marriage Settlement Agreement." She did not sign it. Raisa was acquainted with a neighbor named Tom, who had done some construction work at the Hanafi home. Tom frequently saw Raisa crying, and suggested she talk to his wife, Christine. Raisa had an opportunity to see Christine when Hanafi went to pray, and Raisa told Christine that Hanafi hit her. Christine and Tom advised Raisa not to sign the documents Hanafi had prepared.

Christine accompanied Raisa to an attorney's office sometime in 2007. Raisa showed the attorney, Russell Behjatnia, the documents regarding the division of assets. Behjatnia advised her not to sign them, indicating they appeared to call for an unequal division of assets, although he did not have sufficient information about Hanafi's assets to know. He told her to try to obtain information about all of the marital assets,

explaining that after filing for divorce she could get additional information. He told her that divorce in the United States did not require the consent of both spouses. In Islamic tradition, the husband has to consent to a divorce. Behjatnia did not believe that divorce was a sin or to be avoided according to the Muslim religion, but he said Muslim women avoided divorce because it created a "negative point of view for that individual in [his] society." Raisa appeared to Behjatnia to be hesitant and upset during their meeting.

During 2008, Raisa saw an email on Hanafi's computer that he had written to his attorney, dated June 12, 2008. In it, he listed various properties, indicated he was married, and asked, "Must I live separately and not with her after filing the divorce?" She printed out the email and gave it to the district attorney's office.

Raisa wrote down details about Hanafi, herself, and their finances, and also listed questions she had about divorce law in California. She wanted to have a record of these things in case Hanafi killed her. She twice sought advice from the South Asian Network during 2007 or 2008. They advised her to obtain a divorce through the court system and not to sign anything Hanafi presented to her. They told her they could provide a place for her to live while she filed for divorce, but Raisa was afraid that Hanafi would kill her if she left without his permission. She did, however, move to a different bedroom in the house than Hanafi for about an eight-month period.

Raisa called the police on March 29, 2008, when Hanafi began throwing objects from her room out the window and wanted her to leave. He told her to call the police or anyone else because no one was going to help her. Raisa had not called the police before because she thought a good wife should tolerate whatever her husband said or did, and she had hoped things would get better. She believed that a woman whose husband divorced her would not be respected in society, and in her culture it was considered a sin to divorce. Raisa dialed 911 at about 6:30 p.m. and told the 911 operator her husband was in her room, but she was frightened and hung up. She called again moments later and said, "[M]y husband is going to crazy," and she feared he would kill her. When the police arrived at their home, Raisa said Hanafi had tried to push her down the stairs earlier in the day, but she fell only a few steps and caught herself. Raisa told the police

Hanafi had thrown her things out of the house and that she wanted her things returned to her room. The police spoke to Hanafi and left.

In June or July 2008, Hanafi told Raisa he wanted to send her to Pakistan on August 15, 2008. He wanted her to sign a divorce paper and leave. Hanafi had the paper notarized. Raisa overheard appellant telling her sister on the telephone, as he had told Raisa in person, that he was a very bad man and would treat Raisa very badly if she did not leave.

Fearing that Hanafi would kill her, Raisa prepared a handwritten will on June 26, 2008, leaving her separate property to her siblings in Pakistan. She placed the will in her safe deposit box. Hanafi had been searching for items she kept in her box, including her passport and Social Security information.

About one week prior to July 31, 2008 (when the crimes at issue here began to occur), Hanafi told her to forget everything that had happened and return to their shared bedroom, and she complied.

B. The Crimes

On the morning of July 31, 2008, using his debit card and while being recorded on a store surveillance tape, Hanafi purchased 100 feet of cloth rope, blue and yellow masking tape, coated cloth duct tape, regular duct tape, and five small locks.

Raisa had met Liggins in 2006 or 2007. Hanafi hired Liggins to do repair work at the Hawthorne residence, as well as at apartments Hanafi owned and at the mosque. Liggins and Hanafi were friends. Liggins came to Raisa and Hanafi's home many times and ate meals prepared by Raisa.

On July 31, 2008, Liggins and his father took Shareefa Kendrick to a mutual friend's home. Kendrick, who is a certified notary, had known Liggins's father her whole life and therefore agreed to notarize a power of attorney for Liggins on behalf of his friend, Hanafi. Liggins said Hanafi could not be present and gave Kendrick Hanafi's driver's license number. The power of attorney form did not have any signatures on it, and Raisa's identification was not presented. Nonetheless, Kendrick notarized the blank

document and permitted Liggins to sign her journal of notary book as being the person who had the document notarized. He paid Kendrick $20 and she provided him with a receipt.

Around 7:00 p.m. on July 31, 2008, Raisa returned home from a walk. Hanafi insisted she take some sleeping pills and go to sleep, but she declined. He continued to insist and said he would get some for her. After taking the battery out of the house telephone, saying the telephone would disturb her, he left the house for 15 to 20 minutes. When he returned he gave her one pink and one purple pill, forcing them into her mouth when she tried to refuse them. He told her to lie on the bed, facing the wall, and she complied.

Seconds later, Hanafi and Liggins jumped on top of her and covered her face with a pillow. She could not breathe and was choking, her eyes bulged, and she urinated. Hanafi sat on the pillow on the back of her head and told Liggins he needed to use the stun gun because she was too strong. Liggins used a stun gun on the middle and lower portions of her back, her stomach, the back of her thighs, and just below her groin area. Raisa felt pain throughout her body when Liggins touched her with the stun gun. Both defendants cursed at her, and Hanafi said, "Bitch, tie this bitch." Raisa said she would go back to Pakistan. She kicked and flailed, managing to shove them off to one side. They used a green rope to tie her hands behind her back, and tied her legs together, turning her over onto her back. They retied her hands in front of her.

Hanafi said, "She's not dead. We'll have to take her somewhere else and kill her," and Liggins agreed. Raisa was frightened and urinated onto the bed again. Hanafi taunted her, throwing the inoperable telephone at her and telling her to call the police to save herself. Hanafi grabbed Raisa by the hair and told her to tell him where her passport, jewelry, and money were. She claimed not to remember, then said they were in the room where she kept some boxes. Defendants left the room. After a few minutes, they returned and said they found nothing. Raisa again said she did not remember, and Hanafi replied, "Tell me the truth. We have poison. We have poison injection. Also, we have pistol, also." She told him the items were in a "safe box," the keys for which were

buried outside the house. Hanafi left to search for the keys but could not find them. He returned to the bedroom and Liggins left to search for them. He found them and returned to the bedroom. Hanafi cursed at Raisa and said he hated her. Defendants then prayed together, and later they drank tea and smoked. Raisa was lying on the bed, in pain because of the stun gun.

Hanafi went into the computer room to sleep, while Liggins lay down on the floor next to the bed where Raisa was lying. Around 2:00 a.m., Hanafi came into the bedroom and covered Raisa's eyes with a towel; Liggins was sleeping. Hanafi went to the other room to sleep again. Raisa shook off the towel and eventually was able to untie her hands, using her teeth, then untied her feet. She went to the kitchen and had opened the wooden door and the screen door when Liggins and Hanafi came into the kitchen and grabbed her. She yelled out, "Please help me, call 911. Please help me, call 911." Liggins and Hanafi threw her to the floor, and Hanafi sat on her head. Liggins sat on her back and covered her mouth with his hand. Liggins applied the stun gun to her back and other parts of her body, then put yellow-brown tape on her face, mouth, and neck, and bound her hands and feet with tape.

Santos Galvan, a neighbor of the Hanafis, heard a woman scream what sounded like "help" in a strong voice, sometime between midnight and 4 a.m. on July 31, 2008. Galvan considered investigating but instead went back to sleep. On August 6, 2008, she told detectives from the Hawthorne Police Department about what she had heard.

After binding Raisa with tape, they dragged her back into the bedroom and deposited her on the floor. Defendants said they would have to take her elsewhere and kill her. Liggins said they would tie a weight to her and throw her into the ocean, and Hanafi said they would cut her flesh and feed it to the dogs. Hanafi said he knew someone who would pay them $10,000 for her flesh and sell her organs. Raisa prayed for forgiveness, pressing her palms together at her chest, and Hanafi hit her on the thumb with a flower vase. Hanafi said if she raised her hands like that again he would hit her where the blow would kill her, touching her temple. He repeated his threat that he had a poison injection and a pistol.

Hanafi typed out a durable power of attorney and asked Raisa to sign it. She asked him to remove the tape from her mouth, hands, and eyes, and he did so. She asked what the document was but he told her to keep quiet and sign it. She signed the document halfway down the page. Other signatures at the top and bottom of the page and on the back were not hers. Raisa also signed a durable power of attorney form dated August 1, 2008, after Liggins applied the stun gun to her neck. She did not use her customary signature in the hope the bank would not honor the document.

Raisa testified she did not sign a WAMU affidavit/declaration of attorney-in-fact or a WAMU power of attorney form. Hanafi signed both forms. Raisa stated that she had never seen a different WAMU affidavit/declaration of attorney-in-fact form that had been notarized. Hanafi also signed a WAMU power of attorney and an affidavit/declaration of attorney-in-fact, both dated August 1, 2008. Raisa did not recognize still another notarized WAMU affidavit/declaration of attorney-in-fact dated August 1, 2008.

Hanafi gave the documents to Liggins. Hanafi then forced large tablets into Raisa's mouth but she spit them out. Liggins crushed twice the number of tablets into water and shocked her on the neck, forcing the mixture into Raisa's mouth, but she spit that out as well. Defendants again doubled the dose, crushing the tablets and mixing them with water, Liggins shocked her again, and this time they succeeded in forcing her to drink the mixture. They tied her with dark yellow tape, bound her hands and feet with chains, and placed locks on the chains. They tied dark yellow rope onto the chains and with Raisa lying on her back, they tied her hands and feet to each of the four posts of the bed. Raisa began feeling drowsy. Liggins left but Hanafi remained with her.

When she awoke later, she saw defendants were gathering clothes and talking on their phones. They forced her to take more tablets dissolved into water, and she fell asleep again.

C. Hanafi Empties Raisa's Safe Deposit Box

On Friday, August 1, 2008, Hanafi went to WAMU and presented a power of attorney form together with a safe deposit box key to Tzec, the WAMU employee.[4] Something was amiss with the documents and Hanafi was not permitted to open Raisa's box. He returned to the bank the following day around noon and presented a signed power of attorney form dated August 1, 2008. Tzec verified that the paperwork was in order and retained the original paperwork. The verification process took about one hour; Hanafi acted impatient as he waited. Tzec received approval to let Hanafi into the safe deposit box area, and he signed a log. Another employee, Adam Huesca, let him into the safe deposit box. The bank's security camera captured Hanafi in the bank and entering the safe deposit box area. Hanafi was carrying a clear plastic bag containing papers as he departed.

D. Defendants Move Raisa to Another Location

Hanafi returned home and defendants told Raisa they were taking her somewhere else. She refused to go, begging them not to take her, but Hanafi said it was not safe for him to keep her there. Defendants gathered together clothes and other things. Hanafi told Raisa to be quiet or he would shoot her. Liggins left to get a car. When he returned, they forced her to drink more medicine and shocked her with the stun gun. They removed the chains, taped her hands, then bound her hands and feet behind her with white plastic ties, which they stapled using a staple gun. Her lip was cut and her mouth and face were swollen from being thrown onto the kitchen floor, but they forced a ball gag into her mouth and put tape over it. They covered her eyes with a cloth, picked her up, and took her downstairs. She urinated as they did so. They took her into the attached garage and put her into a car. Liggins drove and Hanafi placed his foot on top of her. He said, "This is the last time I'm lying down with her. This is the last time." She believed they were going to kill her.

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[4] Hanafi's visit to the bank was captured on the bank's security camera.

They drove for about 20 to 25 minutes. The car drove inside someplace and stopped, and they took her out of the car and put her on the ground. Hanafi asked if everything was done, and Liggins replied, "Just wait." After about five minutes, they carried her inside a residence, removed the cloth from her eyes, and untied her hands and feet. They chained her hands and feet again. Raisa saw that they were in an unfurnished room with three windows, which were covered with paper and sheets. She saw clothing and sheets taken from her house.

The apartment she was taken to had recently been rented by Liggins's sister, Khadijha Liggins. It was located at 2710 West 54th Street. The apartment had two bedrooms, a kitchen, a living room, and a bathroom. Upstairs from it was another apartment, with the address 2710 1/2 West 54th Street, which was unoccupied.

Liggins gave Raisa some pizza but she was unable to eat because her mouth was swollen. She continued to doze off and on because of the medicine. They moved her to another room where there were metal bunk beds. They put her on the floor next to the beds and locked the chain that bound her feet to the bed. It was dark outside, and Raisa fell asleep again.

The following day, Liggins continued to give her water with medicine in it, and she felt drowsy. That evening, Hanafi said they were going to take her somewhere else. As before, they blindfolded her, tied her up, picked her up, and put her in the car. They put a cloth in her mouth and covered her body with a cloth. They drove for five to eight minutes then stopped and carried her up some stairs into an apartment. They uncovered her eyes, and as they carried her through the apartment she could see various photographs on the walls of the rooms and the hallway. They carried her into a bedroom and put her on a mattress on the floor, and she saw they had brought the same pillows and blankets they had been using. She also saw photographs of African-American people on the wall of the bedroom. They kept the chains on her hands and legs, and threatened that if she said anything they would kill her with a poison injection. Raisa continued to doze on and off. Liggins gave her more pills mixed into water to make her sleep; she felt dizzy after drinking the water.

Raisa heard a noise outside the window and asked to use the bathroom. She found a pen there and wrote on a paper towel, "Please help me. I'm upstairs near the window. Please help me." She dropped the paper towel out the window.

Defendants gave Raisa yogurt and after eating it she felt dizzy again. Raisa awoke during the night and heard defendants talking. She felt pain in her back from being dragged, her kidney, the left side of her face, and her left thumb. Raisa still felt dizzy when she woke up the next morning.

That evening, defendants put a cloth in her mouth again and blindfolded her. They walked her upstairs to the empty apartment above the one they had been in. She was taken to a room where they removed her blindfold. She saw her television and fan, her green suitcase, and a sheet on the floor. Some of Hanafi's clothes were hanging in the closet.

Liggins watched a "sex type movie" on the television that made Raisa feel very uncomfortable. She was still tied up with chains and ropes. She begged Hanafi to let her go, saying she would leave and go to her brothers and sisters, and not take anything from Hanafi. Liggins said they could not let her go because they had gone too far. She awoke frequently during the night because she was in pain and was frightened at what they might do to her.

The next morning, Raisa asked for water and Liggins gave her something to drink that made her entire body feel like it was on fire. She drank some water in the bathroom and it helped her feel better. She fell asleep again and when she awoke it was evening again. She was still tied up, but they had used cloth to tie her up because she had developed wounds from the chains. Hanafi had put some cream on the wounds on her wrists and legs caused by the chains and the stun gun. He cleaned her with a towel. Defendants gave her some carrot juice for breakfast that made her feel bad. Hanafi left the apartment. During the course of the day, Raisa asked Liggins for water, and three times he gave her water with something mixed into it; she felt very bad after drinking it each time.

E. Raisa Escapes

As the sun was setting that evening, she crawled out of the bedroom and saw Liggins sleeping in the hallway. She had been able to remove the cloths used to tie her hands and legs. She crawled past Liggins, stood up, and went down the steps. She opened the door, went down more steps, and opened another door that led outside. She opened a large gate and ran out of it. She tried to stop two cars to ask them to call 911, but they did not stop.

The date was August 5, 2008. Raisa went to a nearby house belonging to Joy Young, who was at home with her children, and asked for help. She told Young that her husband and his friend were beating her and were going to kill her. They had moved her from place to place and wanted her to sign things. Young called 911 and told the operator what Raisa had said, then handed the phone to Raisa. Young could not understand everything Raisa said because of her accent but heard her say that "he" was holding her hostage.

Raisa demonstrated to Young's children how defendants had placed her on the ground with her hands behind her back and how they used the stun gun on her. Raisa was frightened and tried to hide in the Youngs' hallway and behind their china cabinet. Young saw marks on Raisa's wrists, neck, and lip. It took about 15 or 20 minutes for the police to arrive.

Los Angeles Police Officer Mark Pravongviengkham and his partner went to Young's house. He observed that Raisa was very frightened, and looked severely dehydrated; she had crust around her mouth. Raisa begged the officers not to take her back to her husband because she believed he would kill her. She was afraid to leave Young's house with the police officers.

As an ambulance transported Raisa to California Hospital, she told Officer Pravongviengkham that her husband wanted a divorce and she did not agree to one. He beat her and brought her to the apartment, tied her hands and ankles, and used a taser or other instrument to burn her. The officer could see remnants of tape around Raisa's hands and ankles, and saw marks on her ankle. Raisa lifted her shirt several times to

show him marks or a burn around her waist. Officer Pravongviengkham stayed with Raisa in the emergency room for 30 minutes to an hour. He tried speaking to Raisa in English but eventually requested an Urdu interpreter. Raisa spoke to the interpreter on the phone, and the interpreter then relayed to Officer Pravongviengkham's partner, Officer Wiley, that Raisa said defendants had beaten, tasered, and tortured her.

Dr. Stephen Liu, the emergency room physician, treated Raisa on August 5, 2008. She told him she had been kidnapped and assaulted by her husband. After she returned from a walk, her husband had given her medication to help her sleep, then he and his friend pushed a pillow to the back of her head. Over several days, they tied her up with wire and duct tape, moved her around in the trunk of the car, hit her, and shocked her with some kind of instrument. She felt pain all over her body. She told him she had escaped that day and was brought into the emergency room by police officers.

Raisa's physical examination indicated she felt pain and tenderness when the back and side of her neck was touched. She had a two centimeter bruise on the left upper portion of her abdomen, and Dr. Liu observed abrasions on her wrists and ankles consistent with having been tied up. The color of her bruising indicated it had occurred over the past few days. Her abrasions did not require stitches, but they too appeared to have been inflicted recently. Raisa was distraught and frightened, wanted to be guarded by police officers and placed in the rear of the emergency room.

Dr. Liu stated that a stun gun is used to incapacitate a person by causing pain. If applied for more than a second or two, a stun gun can cause the muscles to contract very rapidly and lead to loss of substrate of the muscle, rendering the muscle useless for a time. This can cause the muscle to break down and can lead to seizures, trauma, loss of consciousness, or loss of bowel and bladder control. The stun gun can cause an electrical burn, bruising, or bleeding inside the skin or tissue and might result in a visible injury. Repeatedly being shocked by a stun gun could lead to kidney damage.

Some of Raisa's bruises and abrasions could have been caused by a stun gun. She had evidence of very early rhabdomyolysis (breakdown of muscles), which releases some substances into the bloodstream. Raisa did not allow Dr. Liu to look under her clothes,

although she showed him some bruising on her torso and bruising and abrasions on her arms and legs.

Dr. Liu treated Raisa for pain, early rhabdomyolysis, and mild dehydration. CAT scans of her head and neck were normal and the other testing he conducted was essentially normal. He did not test her for the presence of carbamazepine or trazodone in her system. He stated her injuries were consistent with what Raisa said had occurred. Photographs were taken of the bruises, wounds, and marks all over her body. She was released from the hospital the afternoon of August 6, 2008. There was no evidence of rhabdomyolysis when she was discharged and she did not have any significant complaints requiring further treatment.

F. The Police Investigation of Khadijha Liggins's Apartment and the Adjacent, Upstairs Apartment

On August 5, 2008, Los Angeles Police Sergeant Michael Glenn first responded to the Youngs' residence and then to Khadijha Liggins's residence, i.e., the downstairs apartment at 2710 54th Street. The property manager was summoned to open the door to the upstairs apartment, which was unoccupied. During a brief sweep of the apartment, Sergeant Glenn saw in one of the bedrooms some bedrolls or blankets, rope, and a blindfold or mask.

Prior to midnight on August 5, 2008, Hawthorne Police Officer Gilbert Sanchez went to the apartments to secure the location while other officers were obtaining a search warrant. When Khadijha Liggins left her apartment around 11:00 p.m., Officer Sanchez spoke to her. She said Liggins was her brother and that he lived with her but was not home. Officer Sanchez telephoned one of the detectives to relate that information. Using a tape recorder, Officer Sanchez attempted to persuade Khadijha Liggins to consent to a search of her home, but she did not agree. He asked her several times because she was not adamant in her refusal. He asked her not to go back into the house and she abided by his request. Khadijha Liggins testified that Officer Sanchez threatened to take her children after he turned off the tape recorder, but he denied making threats of any kind.

On August 6, 2008, Hawthorne Police Detectives Keus and Barber obtained a search warrant for the two apartments. Accompanied by Crime Scene Investigator Linda Schuetze, they went to 2710 West 54th Street. Khadijha Liggins told another officer that Liggins lived with his wife and children and not with her. At trial she said the police told her they knew Liggins lived with her and that if she did not agree she and her mother would go to jail and her children would be placed in foster care.

Helen Sidle (Liggins's mother), his adult sister Sanaa Liggins, and Khadija Liggins's two children (ages 12 and newborn) were in the apartment, and were escorted out by police officers. Liggins was not in the apartment.

Officers photographed the interior, including a mattress on the floor and photographs of African-American women and children hanging on the walls. Officers found an envelope addressed to Liggins in the apartment.

Officers also searched the upstairs apartment and photographed the interior. The apartment was unoccupied and had no furniture. They found in one of the bedrooms dark yellow rope, green rope, a television sitting on the floor, torn pieces of fabric that had been tied in knots, and bedding on the floor. In the closet, they found a blindfold on the floor, men's clothes hanging on the rack, and a bag of women's clothing and toiletry articles. They found Celebrex, Unisom sleep gels, Tums, Gas-X, Aleve, Dulcolax, and Triaminic. In another bedroom they found a tied black trash bag that contained clothing.

In the living room there were boxes and bags and a large green suitcase. The suitcase contained men's clothing, naturalization paperwork for Hanafi, certificates for a real estate or broker's license, grant deeds with Hanafi's name on them, quitclaim deeds bearing Raisa's name, and a WAMU power of attorney document giving Hanafi power of attorney over Raisa's account. There was bedding, sheets, and two pillows on the floor in the hallway. A black "dickies" bag contained plastic zip ties (some unused and some that had been closed then cut open), chains wrapped with brown masking tape and secured by locks, a ball gag with a leather strap, a white cord, red wrappers, a syringe, and needle-nose pliers. In a clear green bottle they found green and gray capsules with "Carbatrol" printed on them. They also found a piece of tinfoil containing white, triangular pills with

"pliva" printed on them. A milk crate in the living room contained men's clothing and a box for a "Dragon Fire" stun gun, indicating it delivered 100,000 volts. The stun gun was discovered in a black cloth bag with "Canada" printed on the side. A trash can in the living room contained a cigar, water bottle, and four live .45-caliber bullets. In the corner of the living room, the detectives found a portable file folder containing Liggins's paperwork, including a birth certificate, letters, court documents, and traffic citations.

The apartment also contained a century lock box which held gold jewelry, seventy-six $100 bills, $3,000 in Bank of America traveler's cheques bearing Raisa's name, Hanafi's and Raisa's passports, First Federal Bank and Bank of America checkbooks bearing Hanafi's name, and a Visa debit card with Hanafi's name on it. Raisa identified the cash, traveler's cheques, and jewelry as belonging to her. Investigator Schuetze did not find any latent prints in the bedrooms.

G. The Investigation at the Hanafi Home

In the upstairs bedroom of Hanafi and Raisa's home detectives found a roll of brownish-yellow tape. There were two typewriters in the garage and a green trash can in the garage held cut zip ties. Hanafi's Honda contained an itinerary indicating Hanafi and Raisa were to fly to Lahore, Pakistan, on August 8, 2008, and return to the United States on December 8, 2008.

H. Analysis of Medications Found During the Investigation

Detective Keus had the capsules and pills recovered during the search tested. The capsules were carbamazepine and the pills were trazodone. Dr. Rebecca Crandall, a forensic psychiatrist, testified that carbamazepine (manufactured under the brand name Tegretol) is used in psychiatry to treat aggressive behavior or manic-depressive disorder. It is an inhibitory medication that is sedating and calming and also causes drowsiness. It can cause ataxia, an inability to balance and walk. Each pill is typically 200 milligrams, and a dosage can be up to 1,000 milligrams. It is recommended that the medication be taken with food. If the recipient were dehydrated, the medication could be more

concentrated in the bloodstream, resulting in increased side effects. It would take an "astronomical" dose to result in complications such as coma or overdose, but an overdose could be lethal.

Trazodone is very sedating and is usually prescribed to treat insomnia. Its possible side effects include dizziness, headache, nausea, and dizziness and faintness upon standing up quickly. The lowest available dose is 50 milligrams, but Dr. Crandall would prescribe only 25 milligrams for insomnia because the medicine is potent. Some people take up to 200 milligrams, but those people must have had ample experience with medication. The effects of Trazodone last from six to eleven hours after ingestion. Dehydration could cause its effects to be intensified. An "astronomical" dose could result in coma or overdose.

If carbamazepine and trazodone were taken together, this could augment the effects of each. Dr. Crandall said a test was available to measure the concentration of carbamazepine in the blood, but she did not know whether there exists a specific test for trazodone.

I. Interviews With Raisa

On August 6, 2008, the police showed Raisa a photographic six-pack after giving her the standard admonition, and she identified Liggins's photograph as depicting one of the assailants.

On August 18, 2008, Raisa spoke with a Hawthorne police detective and a deputy district attorney. She did not use an Urdu interpreter and her English skills were limited. She was also taking medications that made her feel foggy. She told them everything she could remember about what had occurred. At trial, she said she did not remember telling them that her hands had been freed at the second location to which she was taken.

J. DNA Evidence

In August 2009, three items were submitted for testing to the Los Angeles County Sheriff's Department Scientific Services Bureau, and in February 2010, an oral reference

sample from Raisa was obtained. Taken together, the testing revealed the following: (1) a plastic bag adhered to duct tape with possible hair and fibers, found at the 2710 1/2 West 54th Street apartment, was found to have DNA consistent with Hanafi and Raisa as possible contributors; Liggins could not conclusively be included or excluded as a contributor. (2) A used roll of tape with possible hair and fibers, found at the Hanafi home, contained the DNA profile of two possible contributors, Hanafi and Raisa; Liggins was excluded as a possible contributor. (3) A plastic flex cuff found at the Hanafi home contained a mixture of DNA consistent with two possible contributors, one of whom was Raisa; Hanafi and Liggins were excluded as potential sources of the DNA.

II. Defense Evidence

A. Hanafi's Ex-wife

Deborah Baker met Hanafi in June 1985 and began dating him. At the time she had two sons, aged four and six. Baker and Hanafi married in June 1986. Hanafi was loving to her and her children. She worked in retail and Hanafi never told her not to work outside the home. Baker converted to Hanafi's religion, Islam. They were married for three years, during which time he was never physically abusive to her or her sons. They had a joint bank account and Baker had full access to the money in the account. They divorced in 1989, but continued to see one another thereafter. In 1992, Baker signed a quitclaim deed for some property in New Mexico because Hanafi had given her money after their divorce. They began dating again and in 1995 they began living together. They remarried in 1996, but after two years Baker had an affair and Hanafi requested a divorce. He did not pressure her or force her to sign divorce papers, and in fact he continued to help her financially. They remained friends until Hanafi married Raisa in 2001. During all of their time together, Hanafi was loving and treated her sons with respect.

B. Travel Arrangements

Hanafi spoke to Mahammed Khan, a travel agent, on July 31 or August 1, 2008, about traveling to Pakistan as soon as possible. Hanafi said his wife's relative in Pakistan was ill. Khan told Hanafi there was no current availability. On August 5, 2008, Hanafi visited Khan's travel agency and worked out a tentative itinerary for himself and Raisa, leaving August 15, 2008, and returning December 10, 2008. Hanafi did not pay Khan any money at that time. He told Khan there was an emergency on his wife's side of the family and he wanted to go as soon as possible. In November 2008, Khan was questioned by a detective about Hanafi's travel arrangements. He did not mention that Hanafi had said there was a death or illness in the family.

C. The March 29, 2008 Domestic Dispute

When Raisa called 911 on March 29, 2008, Hawthorne Police Officers Michalczak and Moulton went to the Hanafi home and found Hanafi at the bottom of the stairs inside the rear unit on the property, and Raisa was at the top of the stairs. She told them the dispute was about his entering her bedroom. Officer Michalczak did not recall her saying that her husband had pushed her down a flight of stairs, or that he had threatened to kill her. He indicated there was a language barrier present in communicating with her. Raisa's demeanor during the encounter was subdued. The police officers left without making any arrests. If they had suspected any physical violence or injury they would have made an arrest.

D. Tasers and Stun Guns

Greg Meyer, a retired captain with the Los Angeles Police Department, testified as an expert on stun guns and tasers. Stun guns are small, handheld "pain compliance" devices that require the user to make physical contact with the person being stunned. The device at issue in this case would cause some pain and sometimes leave marks, and would emit approximately 20,000 to 30,000 volts. Such a device does not incapacitate a person, but instead causes localized pain that could range from merely annoying to

extremely painful. He had not heard of a situation in which a stun gun such as the one at issue caused someone to lose bladder or bowel control. If one were to place a stun gun on someone's neck for five to 10 seconds, he would expect to see very prominent marks, identifiable by him as having been caused by a stun gun. He did not see any such marks in the pictures taken of Raisa's neck at the hospital. Meyer did not believe a stun gun like the one used here would cause rhabdomyolysis or have a significant impact on muscular makeup or structure. He conceded that he was not a forensic criminalist.

E. Effects of the Medication

A deputy district attorney interviewed Dr. Crandall a few days prior to her testimony regarding the effects of trazodone and carbamazepine. Dr. Crandall stated that neither drug was toxic, and that neither would have a detrimental impact on a person, even if given over a five-day period in the amounts given in this case.

DISCUSSION

Hanafi's Appeal[5]

I. Ineffective Assistance of Counsel

Hanafi contends he was deprived of his Sixth Amendment right to effective assistance of counsel when his trial counsel conceded during closing argument, without Hanafi's knowledge or consent, that Hanafi was guilty of kidnapping. Hanafi asserts that reversal is required of his convictions of kidnapping for extortion on count 1 and kidnapping on count 3. We disagree.

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[5] Liggins joins in the arguments made in Hanafi's briefs on appeal. Where applicable, we discuss the arguments made in Hanafi's appeal to the extent they also apply to Liggins.

A. Background

During closing argument, Hanafi's defense counsel argued that the prosecution had withheld evidence from the defense. He extensively attacked Raisa's credibility and attempted to discredit the stun gun and medical evidence. Counsel acknowledged, however, that there was considerable evidence against his client, allowing that Hanafi had bound his wife and she was found to have duct tape on her legs, and later admitting Hanafi committed forgery in order to obtain access to Raisa's safe deposit box.

When addressing the jury regarding the events occurring at the apartment at 2710 1/2 West 54th Street pertaining to count 3, Hanafi's counsel said, "[N]o one is saying she wasn't either forcibly detained at that location or taken from her house forcibly to that location," adding that Hanafi was willing to accept responsibility for what he did, but not for what he did not do.

Hanafi's counsel said the People's theory on count 1 was that Hanafi abducted her, tied her up, tasered her, beat her, and forced her to sign documents. Counsel explained that in order to convict someone of kidnapping for extortion—unlike with simple kidnapping as charged in count 3—the evidence did not have to show there was an abduction, i.e., the victim could be kept in the same place, but there had to be evidence that the defendant obtained a person's property with the person's consent but obtained that consent through the use of force or fear. "What's not an extortion is when you forge documents, is when you go to the bank behind your wife's back, and when you forge her signature to get the stuff out of the bank, which is what occurred in this case. That's not an extortion. That's kidnapping for nothing. Because again, it's just a detention. . . . [I]f you don't have the extortion, you don't have the crime." Counsel continued, pointing out that count 1 had a lesser-included offense: "If you find that she was detained, and only detained, that's false imprisonment. . . . So you have the choice. You can find him not guilty, or you can find a lesser-included offense of false imprisonment."

Hanafi's counsel then discussed the torture count, arguing there was no showing of great bodily injury, and then discussed count 3, kidnapping. "[H]e took, held, detained another person by force, and using that force or fear, he moved the other person a

substantial distance, and the other person did not consent to the movement. As I've told you, you can fairly find my client guilty of kidnapping or of the lesser charge of false imprisonment if you believe that he just detained her at the second location. You may not. You may say, hey, he took her away. After she found out he stole her stuff, and she didn't want to go to Pakistan, he tied her up right there, and he drove her over to this other location. That's kidnapping. If you don't believe that, because as I showed you, there's very little evidence to support the fact the kidnapping occurred, or a detention occurred at this residence, then it's a false imprisonment."

Counsel then argued that the evidence did not support a finding of theft (referring to count 4) because the evidence showed that the possessions Hanafi took from the safe deposit box were intact, indicating he took the property to bring it to Raisa so they could go to Pakistan, not so he could keep her property for himself. Counsel argued that Hanafi was not guilty of making criminal threats (count 5), but conceded that he had committed spousal abuse (count 6), saying "I mean, that's clear. And again, I don't condone that either."

In conclusion, counsel stated, "[A]ll I'm asking you to do is look at the evidence, to examine the evidence as opposed to the words of people who lied to you continuously. And when you look at the evidence, you will find my client guilty of kidnapping. You'll find him guilty of spousal abuse. But you will acquit him of these other charges that are not supported by the evidence."

Thereafter, Liggins's counsel stated during closing argument that while he conceded that Raisa was present at 2710 or 2710 1/2 West 54th Street, and that she was kept there once she got there, "I do not believe the evidence shows that she was kidnapped and brought there against her will. And that's where, with all due respect, I take exception with [Hanafi's counsel]. I think what you have is, she's brought there. She's kept there by her husband. That's a false imprisonment. That's not a kidnapping. There's no extortion, and there's no movement."

The jury convicted Hanafi of kidnapping for extortion (count 1) (§ 209, subd. (a)), kidnapping (count 3) (§ 207, subd. (a)), criminal threats (count 5) (§ 422), and corporal

injury to a spouse (count 6) (§ 273.5, subd. (a)). The jury failed to reach a verdict on one count of grand theft of personal property (count 4) (§ 487, subd. (a)), and found Hanafi not guilty of torture (count 2) (§ 206), and attempted willful, deliberate, premeditated murder (count 14) (§§ 664 & 187, subd. (a)). The jury convicted Liggins of kidnapping for extortion (count 1) and kidnapping (count 3).

After the verdicts were announced, Hanafi changed counsel and brought a motion for a new trial, contending he was denied a fair trial because his counsel had admitted he was guilty of kidnapping. Hanafi's trial counsel, Steven Levine, stated in a declaration that his strategy was to rebut the People's theory of the case that kidnap for extortion occurred because Hanafi detained Raisa and forced her to sign WAMU power of attorney documents, and instead show the jury that Hanafi did not force her to sign the power of attorney documents but rather forged them. As there was no extortion and no asportation, count 1 should have been at most a false imprisonment. Yet, in closing argument, "I completely misspoke when I ended my closing argument with the statement [that you will find my client guilty of kidnapping]." Levine said he had spoken to a juror who "admitted to me that the jurors indeed believed that Mr. Hanafi forged Mrs. Hanafi's signature on the power of attorney document and that Mrs. Hanafi was not credible; thus the only proper legal verdict as to Count 1 should have been false imprisonment; but for my remark in closing argument, I believe there is a reasonable probability a different result would have occurred."

The People opposed the motion for new trial. Hanafi filed a reply, accompanied by additional declarations. Attorney Levine stated in his declaration that he encountered one of the jurors in a store in April 2011, and the juror told him that the jury "'discussed the fact you said your client was guilty of kidnapping, and it definitely influenced our deliberations.'" Levine stated that the juror had remarked that counsel had given Raisa credibility when she really did not have any.

The trial court held a hearing on the matter and ultimately rejected the claim of ineffective assistance of counsel. The court considered whether it was reasonable to conclude that the jurors thought counsel was conceding guilt as to count 1, or as to count

3, and determined based on the totality of the argument that the jury would have considered the concession to be as to count 3. Regarding it being a concession on count 1, the court said, "[I]s it reasonable for me to conclude that the jurors are going to react to that in such a way that they are — that he is conceding count 1 as opposed to count 3? And I don't see that in light of the argument that just preceded that, when he's addressing the extortion itself, and he says several times, this is a detention, nothing more, because there was no extortion. So because we do have count 3, whether [Levine] felt that was a misstatement or a mistake is irrelevant. It's the impact it could have had or may have had in the process." The court noted that count 1 bore a life sentence while count 3 carried a far lesser consequence, albeit still quite serious.

The court then reviewed the copious evidence as to count 3: the ball gag, the stun gun, duct tape, and prescription medication found in the apartment above Liggins's sister's apartment. The court concluded that it did not see the result on count 3 would have been any different had Levine not conceded it. "And so the fact that, even if it was a misstatement, ultimately I don't think that that misstatement would have had any effect or any bearing on the jury's verdict in this particular case given the strength of the corroborating evidence that was introduced as to that count."

Liggins also brought a motion for new trial, arguing in part that Levine's concession of his client's guilt of kidnapping prejudiced him. In denying Liggins's motion for new trial, the trial court noted that Liggins's trial counsel specifically disavowed the concession and argued there was no kidnapping. The court reiterated "that because there was in fact a kidnapping for extortion and a separate kidnapping count that involved separate acts and conduct, the concession as to one did not amount to a concession as to the other." The court also noted that the jurors were twice instructed that statements of counsel were not evidence.

B. Analysis

"'In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel's performance was "deficient" because his [or her] "representation fell

below an objective standard of reasonableness . . . under prevailing professional norms." [Citations.] Second, he must also show prejudice flowing from counsel's performance or lack thereof. [Citations.] Prejudice is shown when there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." [Citations.]'" (*In re Avena* (1996) 12 Cal.4th 694, 721; see *Strickland v. Washington* (1984) 466 U.S. 668, 687-694; *People v. Cunningham* (2001) 25 Cal.4th 926, 1003.) However, the assessment of prejudice is not "solely one of outcome determination. Instead, the pertinent inquiry is 'whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair.' [Citation.]" (*Avena, supra*, 12 Cal.4th at p. 721.) "[T]he petitioner must establish 'prejudice as a "demonstrable reality," not simply speculation as to the effect of the errors or omissions of counsel.'" (*In re Clark* (1993) 5 Cal.4th 750, 766.) Where a defendant fails to show prejudice, a reviewing court may reject a claim of ineffective assistance of counsel without reaching the issue of deficient performance. (*Strickland*, *supra*, 466 U.S. at p. 697.) We conclude that the concession was undoubtedly harmless considering the overwhelming evidence against defendants.

We agree with the trial court that the jury would not have reasonably understood defense counsel's concession to be as to count 1, kidnapping for extortion. Counsel made clear to the jury that his position on count 1 was that the evidence proved nothing more than false imprisonment because no extortion occurred. In addition, there was no movement of the victim, and therefore simple kidnapping did not apply to the circumstances alleged with regard to count 1. Thus, the jury would have interpreted the concession of guilt to pertain to count 3. With or without counsel's concession of guilt, the evidence was overwhelming that defendants were guilty of kidnapping based on their actions at the apartments on West 54th Street. They offered no rational explanation why Raisa would have gone there of her own volition, rather than being forcibly moved there by defendants. The physical evidence abundantly supported the conclusion that they held her there against her will. A finding of guilt on count 3 was all but compelled by the

evidence. Defendants have not shown there is a reasonable probability that, but for Hanafi's counsel's admission of guilt, the result of the proceeding would have been different.

II. *Wheeler*/*Batson* Motion

Hanafi contends that during voir dire the prosecution exercised its peremptory challenges in a discriminatory manner to exclude the sole male Pakistani from the jury. Hanafi asserts the court erred in denying his *Wheeler*/*Batson*[6] motion concerning that challenges. We are not persuaded.

A. The Applicable Law

When a party makes a *Wheeler*/*Batson* motion, "First, the trial court must determine whether the defendant has made a prima facie showing that the prosecutor exercised a peremptory challenge based on race. Second, if the showing is made, the burden shifts to the prosecutor to demonstrate that the challenges were exercised for a race-neutral reason. Third, the court determines whether the defendant has proven purposeful discrimination. The ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike. [Citation.]" (*People v. Lenix* (2008) 44 Cal.4th 602, 612-613 (*Lenix*).) A defendant establishes a prima facie case "by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred." (*Johnson v. California* (2005) 545 U.S. 162, 170.)

"'Jurors may be excused based on "hunches" and even "arbitrary" exclusion is permissible, so long as the reasons are not based on impermissible group bias.' [Citations.]" (*People v. Watson* (2008) 43 Cal.4th 652, 670.) Counsel also may properly rely on a juror's body language or manner of answering questions in exercising a challenge. (*People v. Reynoso* (2003) 31 Cal.4th 903, 917 (*Reynoso*).)

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6 *People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79.

"Review of a trial court's denial of a *Wheeler/Batson* motion is deferential, examining only whether substantial evidence supports its conclusions." (*Lenix*, *supra*, 44 Cal.4th at p. 613.)

B. Background

Prospective juror number 0425, a teacher from Inglewood, was brought into the courtroom separately and asked if he knew either of the defendants. He said he did not. The prosecutor asked which mosque he attended and he replied that he went to the Inglewood and San Gabriel mosques, depending on which mosque was closest. He later added that he sometimes attended the Culver City and Hawthorne mosques. He said, "But since I go to so many mosques, people know me, but I don't know them sometimes." The prosecutor asked if he had ever seen Hanafi at the Inglewood mosque, and he said, "I don't recall. I don't remember." Juror number 0425 said he did not know either defendant.

As voir dire continued, the prosecutor asked juror number 0425 what subject he taught, and he replied that he taught science. The prosecutor asked if he taught at a mosque or Islamic center, and he said he did not. Juror number 0425 had previously mentioned having a son who was a student, as well as a wife and another child. The prosecutor asked what his son was studying and about his wife and other child.

Addressing the panel, the prosecutor asked if anyone was of the Muslim faith and asked juror number 0425 if he would have difficulty sitting in judgment of someone because of his faith. He said he would not. He agreed that he would be able to listen to the evidence presented and make a decision based on the evidence. After further voir dire, the prosecutor noted that juror number 0425 was quiet. He responded that he had "nothing to say."[7] The prosecutor asked what he felt about the charges and if he had any thoughts about a fellow Pakistani as a defendant. He said he felt nothing. The prosecutor

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[7] The prosecutor also made this observation to at least one other prospective juror.

asked whether, since he spoke Urdu, he could listen to the Urdu interpreter and not the witness speaking in Urdu, and he said, "Yes."

Out of the jury's presence, Liggins's counsel objected to the prosecutor's mentioning to juror number 0425 that he had been quiet, saying it was an attempt to remove him "for cause based upon a witness in this case's apparently hearsay statement that that juror knows —" The court interrupted, indicating he wanted to bring the jury into the courtroom in timely fashion.

The prosecutor later exercised a peremptory challenge to juror number 0425. Hanafi's counsel made a *Wheeler* motion based on the fact 0425 was from Pakistan. He stated, "I understand that citizens of a community can be excused, but it appears this particular prosecutor went out of her way to find something on this particular juror, to find some prejudice, and was unable to do so. Yet here we are where he's now been kicked off." Liggins's counsel joined in the motion, observing, "I believe a showing has been made." The trial court replied, "I do, too," and added, "I'm making a finding."

The prosecutor explained: "I would like to let the court know, first of all, when the court first asked what he did, he only indicated he was a teacher and had two kids and what one of his children did. He did not say what his wife or other child did. Secondly, I don't believe — and I think he's completely incredible, I think. It's my understanding in speaking to another witness in this case that the Pakistani community is extremely close. I have a witness, the victim in this case, that she's 100 percent [sure] he knows the husband. She has seen him at the Inglewood mosque. Maybe he doesn't know her name, but I think he knows the victim and the defendant. Second [*sic*], when I was questioning him about going back to his mosque and the standard of proof being proof beyond a reasonable doubt, he looked down, he did not keep eye contact with me. And he hesitated in his answers as well. Also in speaking with another witness yesterday, when it was inquired how he knew the defendant, he said, 'I know him from the Torrance mosque. He's there all the time. Everybody knows him. In fact, we prayed for him.' I find him extremely not credible. I don't know what his bias is. Maybe he doesn't like me, like the defendant or like the victim. But he failed to keep eye contact. I have a

witness that knows she knows him. And also, further, he also doesn't even interact with the other jurors. I don't believe he'd be a good juror."

Both defense counsel took issue with the prosecutor making extrajudicial statements about the juror which the defense had no opportunity to investigate, stating that the prosecutor had thereby made herself a witness in the case. The trial court asked, "What about the fact that he went to the same mosque?" Hanafi's counsel responded that his client had been in custody for two years so it would have been at least two years since he could have seen him in any mosque, and juror number 0425 said he did not know Hanafi. He acknowledged "[t]he two people go to the same mosque." The trial court said, "Not necessarily it's the same mosque," and asked the prosecutor if she had any information. She replied, "His wife told me he goes to the Inglewood, Torrance, and Hawthorne mosques." Liggins's counsel objected.

The trial court ruled: "With regards to some of the statements you made with regards to the credibility of the prosecutor, I think the third step of a *Wheeler* motion is I must make a sincere and decent inquiry. I have to look at her credibility. And going to the issues of her, the individual, not looking at a juror. I think there are certain things a prosecutor or defense attorney looks at. Mr. Levine had used that same reasoning for the lone Caucasian that he could not explain to this court and he gave very similar reasons that he — 'I didn't like his facial features or demeanor.' Something to that effect. He couldn't find his notes as to why he didn't like that juror. Give me a second. I'll give you the second that you can talk about those factors. I'm going to deny the motions."

Thereafter, the court and counsel discussed the fact that Raisa and another witness had spoken to a detective about knowing juror number 0425 or his knowing Hanafi. The trial court instructed the prosecutor to have the detective memorialize these conversations.

During trial, defendants brought an unsuccessful motion to dismiss the case, arguing that outrageous prosecutorial misconduct required dismissal. One example cited of such misconduct was the prosecutor's peremptory challenge of the sole male Pakistani prospective juror. The prosecutor filed opposition to the motion. As to removal of the

juror, the prosecutor noted her observation that the juror failed to maintain eye contact when asked if he could find a fellow Muslim guilty and discuss that fact at his mosque. She argued she had stated nonracial reasons for the juror's dismissal.

Additionally, in his motion for new trial, Hanafi again argued that the trial court's denial of the *Wheeler* motion required a new trial. The matter was heard by Judge James Dabney, as Judge Scott Millington became unavailable during the trial. At the hearing on the motion for new trial, the court stated: "Dealing with Juror No. 425 . . . , the Pakistani juror, it does appear to me that the transcript indicates that — sufficiently to me that Judge Millington knew what the appropriate procedures were in the face of the *Wheeler* motion. He found a prima facie case. People were required to come forward with their reasons. Now, one thing that makes this unusual is that we have, among the other reasons, information that is outside of the record. And I don't know the answer to that question, because I do recognize that on the one hand, it makes it difficult for the defense to — or for the court to evaluate the credibility if there's no hearing or record for him to base that decision on. But I don't know that a prosecutor who is about to put on a serious and long case, that relies heavily on the testimony of a complaining witness, shouldn't be able to exercise their peremptory challenge if for no other reason than the fact that the witness believes that the juror has contact with the defendant, given the fact that she's gonna have to come into court and testify to that. But I really don't think I need to resolve this issue of law or — because beyond that, the justification that was being put forward went beyond that to things that were and did occur in front of Judge Millington. And it does appear that ultimately Judge Millington, in making his ruling, accepted the explanation that was provided by the prosecutor. And I don't think it was a tit for tat. I think he was merely pointing out that similar reasons, jurors' facial expressions, features, and things of that nature, were used by the defense to exclude the — apparently the lone Caucasian juror, or a Caucasian juror. . . . I saw that as indicating to them that things such as facial expressions and demeanor, the manner they answer questions, things of that nature, are a legitimate basis for exercising a peremptory challenge if they are not

being used as a mere excuse to cover up a group bias. And I think his ruling explicitly rejected that, so I don't believe there was *Wheeler* error that was committed here."

In later denying Liggins's motion for new trial, the trial court commented that it was implicit in Judge Millington's denial of the *Wheeler* motion that the court accepted the reasons provided by the prosecutor were not pretextual. The court stated that the issue was not whether the juror in fact knew Hanafi, but whether Raisa believed the juror did and, if that information was provided to the prosecutor, it would be a race-neutral reason for excluding him. "So in looking at all the factors, I think there was enough from . . . what happened inside the courtroom that the judge would have had an opportunity to make a determination independently as to whether or not he felt . . . there was evidence of that sort of evasive demeanor, things of that nature."

C. Analysis

Despite the need for the foregoing lengthy recitation of the facts pertaining to the *Wheeler* motion, our resolution of this issue on appeal is brief and straightforward. "It is well settled that '[p]eremptory challenges based on counsel's personal observations are not improper.' (*People v. Perez* (1994) 29 Cal.App.4th 1313, 1330, fn. 8 . . . .) In *Wheeler* itself we observed, 'Indeed, even less tangible evidence of potential bias may bring forth a peremptory challenge: either party may feel a mistrust of a juror's objectivity on no more than the "sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another" (4 Blackstone, Commentaries 353)—upon entering the box the juror may have smiled at the defendant, for instance, or glared at him.' (*Wheeler, supra*, 22 Cal.3d at p. 275.) In *People v. Fuentes* (1991) 54 Cal.3d 707 (*Fuentes*), we explained that 'nothing in *Wheeler* disallows reliance on the prospective jurors' body language or manner of answering questions as a basis for rebutting a prima facie case' of exclusion for group bias. (*Id.* at p. 715.) And in *People v. Johnson* (1989) 47 Cal.3d 1194 . . . , we observed, "Nowhere does *Wheeler* or *Batson* say that trivial reasons are invalid. What is required are reasonably specific and

neutral explanations that are related to the particular case being tried.' (*Id.* at p. 1218.)" (*Reynoso*, *supra*, 31 Cal.4th at p. 917.)

The *Reynoso* court continued: "In *Fuentes*, *supra*, 54 Cal.3d 707, we observed, 'This court and the high court have professed confidence in trial judges' ability to determine the sufficiency of the prosecutor's explanations [for exercising peremptory challenges]. In *Wheeler*, we said that we will "rely on the good judgment of the trial courts to distinguish bona fide reasons for such peremptories from sham excuses belatedly contrived to avoid admitting acts of group discrimination." (*Wheeler*, *supra*, 22 Cal.3d at p. 282.) Similarly, the high court stated in *Batson v. Kentucky*, *supra*, that "the trial judge's findings in the context under consideration here largely will turn on evaluation of credibility," and for that reason "a reviewing court ordinarily should give those findings great deference." (476 U.S. at p. 98, fn. 21.)' (*Fuentes*, *supra*, 54 Cal.3d at p. 714.)" (*Reynoso*, *supra*, 31 Cal.4th at p. 918.)

The prosecutor here offered reasonably specific and neutral explanations related to the particular case being tried, i.e., her observations that the prospective juror did not maintain eye contact when answering pivotal questions and did not interact with the other jurors. She also believed the prospective juror was not being honest when he denied knowing Hanafi. The trial court had the opportunity to observe the prosecutor's demeanor and credibility and to determine if the prosecutor was offering bona fide nondiscriminatory reasons for the challenge of juror number 0425, and concluded that the proffered reasons were bona fide. We give great deference to that finding where, as here, the record supports the existence of valid, nondiscriminatory reasons for the challenge. The record demonstrates that the prosecutor made efforts to draw juror number 0425 out (just as she did with other jurors) in order to evaluate his demeanor and explore his acquaintance with one of the defendants; her efforts resulted in what the trial court determined to be a sincere assessment that he would not make a good juror. We conclude the trial court did not err in denying defendants' *Wheeler*/*Batson* motions regarding juror number 0425.

III. The Interpreter's Display of Emotion

Hanafi next contends, joined by Liggins, that the trial court prejudicially erred by denying his motion for a mistrial based on the fact the interpreter had an "emotional outburst" and "began to openly weep" during Raisa's testimony. He contends the display of emotion violated his federal constitutional rights to due process and a fair trial, improperly lending credibility to the testimony of the prosecution's key witness. We disagree that declaring a mistrial was warranted under the circumstances.

A. Background

Raisa testified through an Urdu interpreter. She testified on direct examination that Hanafi put a pillow over her head and choked her while Liggins shocked her with a stun gun. The trial court inquired of the interpreter: "Are you okay, madam interpreter?" The interpreter replied that she just needed a moment. The trial court ordered a recess.

Liggins's trial counsel moved for a mistrial, stating that the interpreter "in clear view of the jury began to weep or tear or cry to some extent." Counsel stated the jury had seen the interpreter was "apparently moved by the emotion and I would argue credibility and veracity of Raisa. If the interpreter did not believe her, it certainly would be unlikely she'd be brought to tears, and I think it has inflamed and prejudiced the jury in a way that is going to be very difficult, if not impossible, to overcome." Hanafi's counsel agreed, noting that defendants' case turned on Raisa's lack of credibility.

The prosecutor responded that the interpreter's back was to the jury. "It's clear there was some sort of emotion, but I don't think it will affect the jury that much, and if the defense counsel assumes that perhaps it did to such an extent, that I would say there's a jury instruction that can be done perhaps, but I don't think it is enough for a mistrial at all." The court replied, "I don't think it rises — well, I'll do this. I will reserve a ruling on that. If you have any authority, you can present it to the court, but I think for me to declare a mistrial would be premature. Is there any admonition that anyone would request I give the jury?" Hanafi's counsel asked that no admonition be given, and requested that a new interpreter be used. The court noted, "I'll just be honest. The court

has never seen that happen before, and I don't know if it will happen again with this interpreter. So maybe that's not a bad idea. Does that somehow highlight her activity then?" Liggins's attorney agreed that a new interpreter should be brought in, stating, "I think it's actually a very appropriate request for this reason as well. While there's a chance of highlighting it, I think the elephant has already walked into the room. I think by replacing this interpreter, I think subliminally or not so subliminally it may send a message to the jury, you're not supposed to consider that, interpreters are supposed to keep a certain keel."

The trial court asked the interpreter if this was not the right case for her and she assured the court she would not become emotional again. The trial court did not want to risk the interpreter becoming emotional again and determined it would request a new interpreter. The court asked if counsel objected to the court telling the jury it was inappropriate for an interpreter to express any emotion, that they were not to consider that for any purpose, and that the court would be bringing in a new interpreter. Hanafi's counsel said that was fine. The prosecutor stated, "I want to make the record clear, defense counsel indicated there was an outburst by the interpreter, and there was no such outburst, just for the record to be clear." The court replied, "I think the record is clear why we took a break." The prosecutor said, "That's true, but there was no outburst." The court said, "So I will advise them." Liggins's counsel did not request that the jury be admonished, stating it would highlight the issue.

Thereafter, the trial court stated, "I wanted to tell you that it is inappropriate for an interpreter to express any emotion in a trial. Okay. And I want all of you to assure me you will not hold that against anyone in this case, you will not judge the credibility of any witness differently based upon the interpreter's emotions. What's important is each witness be judged by the same standard. You, not an interpreter, you all are the judges of the credibility of any witness that comes into court. Not even me. You are the judges of the credibility. You must do that on your own and talk about it during your deliberations, but not let that interpreter influence you in any way." A different interpreter was called to replace the first one.

B. Analysis

"A trial court should grant a mistrial only when a party's chances of receiving a fair trial have been irreparably damaged, and we use the deferential abuse of discretion standard to review a trial court ruling denying a mistrial." (*People v. Bolden* (2002) 29 Cal.4th 515, 555, citing *People v. Ayala* (2000) 23 Cal.4th 225, 282.)

The record demonstrates that the trial court immediately acted to minimize the effect on the jury of the interpreter's display of emotion by calling a recess, replacing the interpreter, and admonishing the jurors that they were not to judge the credibility of any witness based upon the interpreter's display of emotion. The display of emotion itself does not appear to have been dramatic, lengthy, or appropriately described as an "outburst." Given that the trial lasted for weeks, and Raisa's testimony itself was extensive, the incident with the interpreter does not appear to have been an important factor such that defendants' right to a fair trial was irreparably damaged. We defer to the trial court's ruling that a mistrial was not warranted. The trial court was in the best position to observe the incident, including the nature and extent of the display of emotion and its likely effect on the jurors. Moreover, even if Raisa's testimony was minimally bolstered temporarily by the interpreter's reaction, it is clear from the record that the jury did not judge Raisa's credibility to be unblemished. Indeed, as the trial court observed, defense counsel were able to effectively impeach portions of her testimony and demonstrate to the jury that some of her testimony stretched credulity. The jury acquitted defendants on several counts, demonstrating that the jurors were able to independently judge Raisa's credibility without being swayed by a fleeting display of emotion on the part of an interpreter, who was quickly replaced by another for the remainder of the lengthy trial. We conclude that the trial court did not err in denying defendants' motion for new trial on this basis.

IV. Sufficiency of the Evidence to Establish Kidnapping for Extortion

Hanafi, joined by Liggins, next contends that there was insufficient evidence to sustain the convictions of kidnapping for extortion because there was no secondary victim involved. Arguing that intermediate appellate courts in California are divided on whether kidnapping for extortion requires a secondary victim, defendants urge us to follow the decisions requiring proof of a secondary victim. Because, as respondent points out, appellate courts are not in fact divided on the issue, we reject defendants' argument that the evidence was insufficient to support the convictions on count 1.

The contention raised by defendants was persuasively addressed in *People v. Kozlowski* (2002) 96 Cal.App.4th 853 (*Kozlowski*) and *People v. Ibrahim* (1993) 19 Cal.App.4th 1692 (*Ibrahim*), with which we are in accord. In *Kozlowski*, the appellants "contend[ed] that kidnapping for extortion pursuant to former section 209 necessarily requires two victims for each offense—one victim who is kidnapped and a second victim from whom the accused extorted property. They reason[ed] that this distinction is essential because it allows us to distinguish between the different punishments imposed for kidnapping for extortion and kidnapping for robbery or rape. [Appellants] contend[ed] that their convictions of kidnapping for extortion violate state and federal due process because the People did not prove all elements of the offense—that is, a second victim for each offense. (See U.S. Const., 5th & 14th Amends.; Cal. Const., art. I, § 15.)" (*Kozlowski*, *supra*, at p. 870.)

Section 209, subdivision (a) provides in relevant part as follows: "Any person who . . . kidnaps . . . another person . . . with intent to hold or detain, or who holds or detains, that person . . . to commit extortion or to exact from another person any money or valuable thing . . . shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm . . . ." Our Penal Code defines extortion as "the obtaining of

property from another, with his [or her] consent, . . . induced by a wrongful use of force or fear . . . ." (§ 518; see § 7 [masculine gender includes feminine].)[8]

As the *Kozlowski* court stated: "Courts interpreting [section 209] against similar challenges have concluded that kidnapping for extortion does not require that the person being extorted be someone other than the kidnap victim. (*People v. Ibrahim*[, *supra*,] 19 Cal.App.4th [at pp.] 1693, 1696-1698; see *People v. Superior Court* (*Deardorf*) (1986) 183 Cal.App.3d 509, 513-514; *People v. Preston* (1971) 21 Cal.App.3d 732, 735.)" (*Kozlowski*, *supra*, 96 Cal.App.4th at pp. 870-871.) As did the court in *Kozlowski*, we agree with the statutory interpretation enunciated by the court in *Ibrahim*: the argument that kidnapping for extortion requires a secondary victim "belies the plain language of the aggravated kidnapping statute, which encompasses a kidnapping 'for ransom, reward or to commit extortion *or* to exact from another person any money or valuable thing . . . .' (Pen. Code, § 209, subd. (a), italics added by *Ibrahim*.) Because the statute is phrased in the disjunctive, it describes four different types of aggravated kidnapping: (1) for ransom; (2) for reward; (3) to commit extortion; and (4) to exact from another person any money or valuable thing. The crime of extortion (Pen. Code, § 518) does not require that the fruits of the extortion be obtained from a third party. Appellants would have the 'another person' language of the fourth type of aggravated kidnapping apply to the first three, but that construction is logically precluded by the disjunctive language of the statute." (*Ibrahim*, *supra*, 19 Cal.App.4th at p. 1696; cited in *Kozlowski*, *supra*, 96 Cal.App.4th at pp. 870-871.)

Discussing the supposed split in case authority on this issue, the court in *Kozlowski* stated: "In two other decisions, courts have suggested in dicta that even aggravated kidnapping for extortion is a two-victim crime involving a primary kidnap victim and a secondary extortion victim. (*People v. Chacon* [(1995)] 37 Cal.App.4th [52,] 63 [kidnapping for ransom case]; *People v. Martinez* (1984) 150 Cal.App.3d 579,

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8 In contrast, section 209, subdivision (b)(1) provides that "Any person who kidnaps or carries away any individual to commit robbery [or] rape . . . shall be punished by imprisonment in the state prison for life *with* the possibility of parole." (Italics added.)

590-591, disapproved on another point in *People v. Hayes* (1990) 52 Cal.3d 577, 628, fn. 10, cert. den. *sub nom. Hayes v. California* (1991) 502 U.S. 958; see *People v. Ibrahim*, *supra*, 19 Cal.App.4th at pp. 1696-1697 [rejecting this interpretation of *Martinez*].) Citing these cases, Kozlowski and Gatson reason that there are two conflicting lines of case law and argue that we should find the *Chacon-Martinez* cases more persuasive than *Ibrahim*. Like the *Ibrahim* court before us, we read the suggestions in *Chacon* and *Martinez* as dicta and decline to elevate them to law. Thus, we find no conflict in the case law. (See *People v. Ibrahim*, *supra*, 19 Cal.App.4th at p. 1697.) One may lawfully be convicted of kidnapping for extortion even if the kidnap victim and the extortion victim are the same person. (See, e.g., *id*. at pp. 1696-1698.)" (*Kozlowski*, *supra*, 96 Cal.App.4th at p. 871.)

To briefly expand on the *Kozlowski* court's observation that *Martinez* and *Chacon* did not create a conflicting line of case law, we note the following. The court in *Martinez* reviewed prior cases involving aggravated kidnapping and concluded that the aggravated kidnapping statute is "intended to apply to those situations involving a primary and secondary victim, where one of the victims is held or taken away and the other is subjected to a ransom or extortion demand." (*Martinez*, *supra*, 150 Cal.App.3d at p. 591.) Based on that discussion in *Martinez*, appellants in *Ibrahim*, for example, attempted to assert "that the four situations described in that case are the *only* possible types of kidnapping for ransom or extortion, and thus kidnapping for extortion requires a secondary victim other than the person kidnapped. But *Martinez* did not so hold. The court merely categorized the existing cases and concluded the statute was intended to apply to situations involving primary and secondary victims. The court never said those situations represent the *exclusive* application of the statute." (*Ibrahim*, *supra*, 19 Cal.App.4th at p. 1697.) *Martinez* instead addressed the disparity in confinement that distinguishes robbery from aggravated kidnapping. (*Martinez*, *supra*, 150 Cal.App.3d at p. 594.) "'Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition

not therein considered. [Citations.]' [Citation.]" (*People v. Hinds* (2003) 108 Cal.App.4th 897, 901.)

In *Chacon*, *supra*, 37 Cal.App.4th 52, in describing the difference between robbery and extortion, the court noted that the latter involves taking property with the victim's consent and the former involves taking property against the victim's will. In addition, *Chacon* stated that "[i]f the ransom demand is made on a person other than the kidnap victim, there is no robbery. The kidnapping for ransom statute applies '. . . to those situations involving a primary and secondary victim, where one of the victims is held or taken away and the other is subjected to a ransom or extortion demand.' (*People v. Martinez*, *supra*, 150 Cal.App.3d at p. 591.)" (*Chacon*, *supra*, at p. 63.) This brief discussion in *Chacon* does not persuasively support the proposition that a secondary victim is statutorily *required* to support a conviction for kidnapping for extortion. Indeed, *Chacon* involved a conviction of kidnapping for ransom, not kidnapping for extortion, so the court's comments regarding kidnapping for extortion requiring a secondary victim are dictum.

No split of authority thus exists. In addition, we agree with and therefore follow the holding reached in *Kozlowski* and *Ibrahim* that, as matter of statutory construction, a secondary victim is not a factual requirement to support a conviction of kidnapping for extortion.

V. Defendants' Acts Did Not Constitute an Indivisible Course of Conduct

Finally, Hanafi contends, joined by Liggins, that the evidence established a single, continuous course of conduct with a single criminal objective—to force Raisa to give Hanafi her property, agree to a divorce, and return to Pakistan. Therefore, the prosecution should not have been allowed to split the crime into two separate kidnappings, kidnapping for extortion (count 1) and kidnapping (count 3). Hanafi contends that reversal of his conviction on count 3 is mandated. Alternatively, Hanafi argues that even if splitting the crime into two separate kidnappings were permissible, the trial court erred by imposing a concurrent term on count 3 because counts 1 and 3

involved but a single, indivisible course of conduct. He argues the sentence imposed on count 3 therefore must be stayed. We disagree.

A. Background

The information charged defendants in count 1 with kidnapping for extortion (§ 209, subd. (a)) between July 31, 2008, and August 1, 2008 (when Raisa was held at her house), and in count 3 with kidnapping (§ 207, subd. (a)) on August 2, 2008 (when Raisa was moved to other locations).

At sentencing, the trial court addressed whether the two counts merge under section 654, and if not, whether the court should impose concurrent or consecutive sentences on counts 1 and 3. The court ruled that the counts did not merge because the criminal acts "were separate and distinct [and] occurred at separate dates and separate times." The court noted that the charges were not made in the alternative, and the crimes "did have distinct intents, even though the overarching intent may have been the dissolution of their marriage." The court rejected the section 654 claim because the acts entailed "separate acts of violence, because there is the act of violence that occurred originally at the home, and then after she's moved to the other location or locations."

On count 3, the court sentenced Hanafi to the upper term of eight years, to run concurrently to the sentence on count 1, reiterating that although the crimes were "interrelated" and "all part and parcel of one overarching objective," "there were separate objectives as to each individual act of violence."[9]

B. Analysis

In *People v. Wiley* (1994) 25 Cal.App.4th 159 (*Wiley*), the defendant attempted to force his victim to withdraw money from a drive-through ATM, but the victim's ATM card did not work. Defendant forced the victim to call the victim's wife and tell her to meet them at another location with $300, all while holding the victim at gunpoint.

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9 As we discuss in the next section, as to Liggins the trial court ordered the sentence on count 3 to run consecutively because he had a prior strike.

Defendant was convicted of kidnapping for robbery for the activities up until the time the victim was unable to obtain money, and also for kidnapping for ransom for the remaining activities. The defendant contended on appeal that this was an impermissible division of a single crime into multiple offenses. (*Id.* at p. 162.) The appellate court disagreed, observing: "Kidnapping for robbery and kidnapping for ransom involve different elements and different statutes. . . . Section 954 permits multiple convictions where two or more different offenses are committed together in their commission. Here, the kidnapping for robbery terminated before the detention for extortion began. Although the commission of these offenses occurred during the same general transaction, section 954 expressly permits multiple convictions." (*Id.* at pp. 162-163.) Similarly here, the kidnapping for extortion terminated before the kidnapping began. Pursuant to section 954, multiple convictions were permitted here and we decline to reverse defendants' convictions on count 3.

In *Wiley*, the court did, however, hold that defendant's sentences on the two counts could not be ordered to run concurrently because the two crimes were incident to a single objective, obtaining the victim's money illegally. Section 654 "permit[s] punishment for only one of multiple offenses which are incident to a single objective as determined by the intent and objective of the actor. (See *People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)" (*Wiley*, *supra*, 25 Cal.App.4th at p. 163.)

In contrast here, we conclude that substantial evidence supported the trial court's finding (though not fully articulated) that the two kidnapping offenses were not incident to a single objective as determined by the intent and objective of the actors. (*People v. Blake* (1998) 68 Cal.App.4th 509, 512 [trial court's implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if supported by substantial evidence].)

As noted above, the court found that although the "overarching" intent was dissolution of the Hanafi marriage, defendants' intent and objective were distinct as they carried out the violent activities comprising the two crimes. Defendants first confined Raisa at the Hanafi home, and bound, shocked, and attacked her, in order to further their

intent of gaining access to the contents of her safe deposit box. They forced her to divulge the location of the key to her safe deposit box and to sign documents. Even if the form she ultimately signed was not the one Hanafi presented to the bank, they confined her so she could not remove the contents of the box while they got the power of attorney form notarized. Once Hanafi removed everything from her safe deposit box, defendants formed a different intent and objective, to conceal and protect themselves from the consequences of their wrongdoing while they figured out what they would do with her. Raisa testified that Hanafi said they were moving her because it was not safe for him to keep her at their home. After moving her to the unoccupied apartment, she begged them to let her go, saying she would leave and return to Pakistan and not take anything from Hanafi. Liggins said they could not let her go because they had gone too far. Although the two kidnapping offenses occurred close in time, one beginning as the other ended, the two offenses were nonetheless carried out during distinct and separable periods of time. Accordingly, we conclude that the trial court had before it substantial evidence from which it could reasonably determine that defendants had separate intents and objectives in carrying out the two offenses, and thus punishment for each offense was warranted. The trial court was not required to stay imposition of sentence on count 3.

Liggins's Appeal

Liggins contends on appeal that his sentence on count 3 must be reversed and the case remanded for resentencing because the trial court erroneously believed it did not have discretion to impose a concurrent sentence for his conviction on count 3 under the Three Strikes law. We disagree.

A. Background

The court sentenced Liggins on count 3 to the middle term of five years, doubled to 10 years because he had one prior strike conviction. The court ordered that Liggins was to first serve the determinate term, before the indeterminate terms of life with the

possibility of parole. The court ruled that it had no discretion to impose a concurrent term for count 3 under the mandatory consecutive sentence provisions of the Three Strikes law. It stated: "[A]s alleged in the information and as stated in the verdict findings, the [section] 209 related to conduct from July 31st of 2008 to August 1st, which was the detention of Ms. Hanafi for the purpose of obtaining the contents of her safe[] deposit box. And count three is alleged to have occurred on August 2nd, and that's where she was moved from one part of the county to another, which were both separate acts and don't share temporal or spacial proximity to one another. So it appears to me that I have no discretion and that I must sentence consecutively. I will state for the purpose of the record on appeal that, as I did with Mr. Hanafi, had I had the discretion, I think the sentence that Mr. Liggins is going to receive on count one is — adequately addresses the course of conduct of both counts in that he is going to serve a life sentence [with] the possibility of parole, which will be doubled pursuant to the Strike law."

B. Analysis

Sections 1170.12, subdivision (a)(6) and (7) provide: "(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section. [¶] (7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) [of this subdivision], the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law." (See also § 667, subd. (c)(6).)

Thus, a consecutive sentence is mandated for any current felony convictions or serious or violent felony convictions "'not committed on the same occasion, and not arising from the same set of operative facts.'" (*People v. Deloza* (1998) 18 Cal.4th 585, 590-591; *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1566.) The multiple punishment provisions of section 654 are irrelevant to this analysis. (*Garcia, supra*, at p. 1566.) "If there are two or more current felony convictions 'not committed on the

same occasion,' i.e., not committed within close temporal and spacial proximity of one another, *and* 'not arising from the same set of operative facts,' i.e., not sharing common acts or criminal conduct that serves to establish the elements of the current felony offenses of which defendant stands convicted, then 'the court shall sentence the defendant consecutively on each count' pursuant to subdivision (c)(6)." (*People v. Lawrence* (2000) 24 Cal.4th 219, 233 (*Lawrence*).) Other factors, such as the nature and elements of the current charged offenses, may also be relevant in defining the parameters of the above phrases. (*Ibid.*)

"[T]he extent to which common acts and elements of such offenses unfold together or overlap, and the extent to which the elements of one offense have been satisfied, rendering that offense completed in the eyes of the law before the commission of further criminal acts constituting additional and separately chargeable crimes—are additional factors the court must consider in determining whether multiple current crimes arose from the 'same set of operative facts' when the offenses are committed more than seconds apart. ([*People v.*] *Durant* [(1999)] 68 Cal.App.4th [1393,] 1406.)" (*Lawrence*, *supra*, 24 Cal.4th at p. 233.) "'[W]here the elements of the original crime have been satisfied, any crime subsequently committed will not arise from the same set of operative facts underlying the completed crime; rather such crime is necessarily committed at a different time. For instance, with the crime of burglary, where the offense is complete when there is an entry into a structure with felonious intent, "regardless of whether the felony or theft committed is different from that contemplated at the time of entry, or whether any felony or theft actually is committed" (*People v. Montoya* (1994) 7 Cal.4th 1027, 1041-1042), the commission after the first burglary of a crime or burglary of another structure necessarily will arise out of different operative facts than those underlying the original offense.' (*Durant*, *supra*, 68 Cal.App.4th at pp. 1405-1406.)" (*Lawrence*, *supra*, 24 Cal.4th at pp. 232-233.)

Here, the elements of kidnapping for extortion had been satisfied, rendering that offense completed in the eyes of the law, before the commission of the further criminal acts constituting the additional and separately chargeable crime of kidnapping. The

commission of the kidnapping necessarily arose out of different operative facts than those underlying the kidnapping for extortion offense. The two offenses also were not committed within close temporal and spatial proximity of one another. The trial court was correct in finding that a consecutive sentence for count 3 was mandated by the Three Strikes law.

LIGGINS'S SENTENCE

As noted, the trial court sentenced Liggins for the kidnapping for extortion (count 1) to a life term with the possibility of parole. Because he had a prior strike, the court imposed a second life term. This was error. When a defendant has a prior strike and is sentenced to a life term with the possibility of parole, the minimum term of confinement set forth in section 3046 is doubled. (*People v. Jefferson* (1999) 21 Cal.4th 86, 99-100.) Under section 3046, the minimum term for an indeterminate sentence is seven calendar years, with exceptions not relevant here. Thus, as a second striker, Liggins must serve a minimum of 14 calendar years before he is eligible for parole on count 1.

DISPOSITION

Hanafi's judgment is affirmed. Liggins's judgment is modified to reflect that he is to serve a minimum of 14 calendar years on his indeterminate sentence on count 1, the kidnapping for extortion. As modified, Liggins's judgment is affirmed. The superior court clerk is directed to prepare an amended abstract of judgment reflecting the new sentence on count 1 and forward a copy to the Department of Corrections and Rehabilitation.

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.